IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

COMPANY **PETITION No. 204** of 2006.
CONNECTED WITH
COMPANY APPLICATION No. 727 of 2005.

In the Matter of Composite Scheme of Arrangement and Amalgamation of Anik Industries Pvt.Ltd. and General Foods Ltd. and General Foods Ltd. and Madhya Pradesh Glychem Industries Ltd. and Ruchi Health Foods Ltd and Ruchi Pvt. Ltd. and Nutrela Marketing Pvt.Ltd. and Ruchi Soya Industries Ltd. and their respective shareholders.

ANIK INDUSTRIES PVT.LTD. .. ..Petitioner Company.

With
CP No. 205/2006
CA No.728/2005

General Foods Limited. .. ..Petitioner.

With

CP No. 206/2006
CA No. 836/2005

Madhya Pradesh Glychem Industries Ltd. ...Petitioner.

With

CP No.207/2006
CA No. 729/2005.

Ruchi Health Foods Ltd. ...Petitioner.

With

CP No. 208/2006
CA No.730/2005

Ruchi Pvt.Ltd. ...Petitioner.

With

CP No. 209/2006

CA No. 731/2005

Nutrela Marketing Pvt.Ltd. ...Petitioner.

With

CP No. 210/2006
CA No. 837/2005.

Ruchi Soya Industries Ltd. ...Petitioner.

Versus.

M/s. Nutricia (India) Pvt. Ltd. .. .. ..Objector.

Mr. D. Khambhata with Rajesh Shah for Petitioners.

Mr. C.J. Joy for Regional Director.

Mr. Sanjay Udeshi i/b. Sanjay Udeshi & Co. for Objector.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 30th June, 2006.

P.C.

1] At the out set, Mr. Udeshi, learned Counsel appearing for one of the unsecured Creditors states that there is an objection to the scheme because this unsecured Creditor had supplied to the petitioners certain machineries upon payment of monthly lease rental. There is default committed in paying the same and, therefore, matter was referred to Arbitration of a Retired Judge of Delhi High Court. The Arbitrator has made an Award and apart from directing payment of monetary sums has also issued a direction to the petitioners to hand over

the machineries. A copy of the Award is placed on record by Shri. Udeshi. Mr. Khambata, Sr. Counsel, appearing for the petitioners invites my attention to a letter which is addressed by the petitioner to the Company - M/s.Nutricia (India)Pvt. Ltd. (the objector herein) forwarding therewith demand draft and also stating clearly that the petitioners would comply with the Award inasmuch as the objector should come and take back the machineries from the site. Mr. Khambata after taking instructions makes a further statement that the machineries are available at the site and the objector can collect the same as stated in this letter.

2] In the light of this statement of Shri.Khambata and the letter addressed by the Company to objector on 22nd June, 2006 the objection of Mr.Udeshi to the sanction of the scheme does not survive.

3] This is a scheme of amalgamation and various businesses of the petitioners are sought to be reorganized for better and efficient management and smooth operation.

4] A copy of the scheme has been annexed to

the petition and its salient features are set out in the petition.

5] All details including with regard to latest financial position have been set out. Necessary declarations have been given and compliance with the statutory provisions with regard to sanction are made.

6] The Regional Director has filed an affidavit in which the objection raised is that the scheme envisages that certain businesses(other than dairy businesses) of one of the petitioners are going to be sold for cash consideration of Rs. 80.57 Crores. According to the Regional Director such a case is not envisaged by Sections 391 to 394 and the case falls under Section 293 of the Companies Act.

7] In my view, the scheme which is for organizing and re-organizing the business and clearly falling within the Section 391 would involve save and except all but one of the businesses. The Board of Directors are empowered under the Companies Act to take a decision of sale of assets save and except after seeking sanction of the general body of

shareholders. It is not the Regional Director's case that a scheme framed under Section 391 of the Companies Act cannot in all cases cover sale or disposal of businesses of Transferor Company. On the other hand, he places reliance upon Section 293 to urge that it is only this provision which would permit such a course of action whenever a scheme of compromise or arrangement with the persons envisaged by Section 391 is placed for sanction of the Court and the Court having directed in this case convening of the meeting of the shareholders of the Madhya Pradesh Glychem Industries Ltd.(one of the petitioner- transferor) and they having approved the scheme, in my view, this objection need not be examined in further details. The Company has gone to its shareholders and may be with the sanctioned scheme but it is under the orders and directions of this Court that the meeting was convened. Therefore, I donot find any merit in this objection. The larger issue as to whether such a step on the part of the Transferor Company is covered by Section 391 or not, need not be examined in the facts and circumstances of the case.

8] As far as change of name, the Company would comply with the provisions in the Companies Act in that behalf is the statement made by Mr.

Khambata on instructions. Therefore, that objection also does not survive. The last objection pertains to increase in the authorised capital and Mr. Khambata after taking instructions makes a statement that due compliance with the provisions of Sections 94 to 97 in respect of the filing necessary forms would be made.

9] The Official Liquidator has also filed his report and relied upon the observations of the Chartered Accountants. It is pointed out that the books of account and other relevant records have been duly scrutinized. The accounts for the past five years have also been looked into. The explanation given for writing off the Bad Debts has also been found to be satisfactory.

10] The affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or to public interest is the conclusion of the Chartered Accountants.

11] In the above circumstances, all company petitions deserve to succeed. Company Petition No. 204 of 2006 is made absolute in terms of prayer clause (a) to (l), Company Petition No.205 of 2006 is made absolute in terms of prayer clause (a) to

(t),Company Petition No.206 of 2006 is made absolute in terms of prayer clause (a) to (t), Company Petition No. 207 of 2006 is made absolute in terms of prayer clause (a) to (m), Company Petition No. 208 of 2006 is made absolute in terms of prayer clause (a) to (u), Company Petition No.209 of 2006 is made absolute in terms of prayer clause (a) to (l) and Company Petition No. 210 of 2006 is made absolute in terms of prayer clause (a) to (u),subject to payment of costs to Regional Director and Official Liquidator quantified at Rs.2,500/- each in a respective petitions.

12] All concerned parties including Registrar of Companies toact on the ordinary copyof the order and scheme annexed to the petition authenticated by the Company Registrar, High Court, Bombay.

[S.C.DHARMADHIKARI,J.]